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HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 461 of 2002

Chakro & another

Versus

State of Chhattisgarh

AND

Criminal Appeal No. 462 of 2002

Mohan & another

Versus

State of Chhattisgarh

JUDGMENT

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Justice L.C. Bhadoo, J

I agree

Sd/-
L.C. Bhadoo
Judge

Post for Judgment: 5/11/2007

Sd/-
Sunil Kumar Sinha
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Sunil Kumar Sinha, JJ.

Criminal Appeal No. 461 of 2002

APPELLANTS

1 Chakro aged about 23 years, S/o Shri Vidhyadhar

2 Vidhyadhar aged about 45 years S/o Shri Laldhar

Both residents of Subhash Nagar, Telibandha, Raipur (C.G.)

Versus

RESPONDENT

State of Chhattisgarh, through P.S. Civil Lines, Raipur

AND

Criminal Appeal No. 462 of 2002

APPELLANTS

1 Mohan aged about 19 years, S/o Shri Rutudurga

2 Vijay aged about 21 years S/o Shri Vishwanath

Both residents of Subhash Nagar, Telibandha, Raipur (C.G.)

Versus

RESPONDENT

State of Chhattisgarh, through P.S. Civil Lines, Raipur

Appearance:

Shri Kishore Bhaduri, Shri Ashok Soni and Shri Ambuj Agrawal, Advocates, for the appellants in both the criminal appeals.

Shri Satish Gupta, Dy. Govt. Advocate, for the State/respondents in both the criminal appeals.

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JUDGMENT
(5.11.2007)

Following judgment of the Court was delivered by **Sunil Kumar Sinha, J.**

(1) These appeals are directed against the judgment of conviction and order of sentence dated 28-03-2002 passed by the 3rd Additional Sessions Judge, Raipur in Sessions Trial No. 184/2001, whereby, all the appellants have been convicted u/s 148 I.P.C. and appellant-Chakro has been convicted u/s 302 I.P.C. and other appellants have been convicted u/s 302/149 I.P.C. and sentenced to undergo imprisonment for two years, imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo additional imprisonment for two months, respectively with a further direction to run the sentences concurrently.

(2) The facts, in brief, are that on 24-03-2001, the deceased Raja @ Dil Ka Raja was sitting in the house of Babulal in drunken condition and was murmuring. Appellant Chakro came there and tried to stop him. When, he did not hear, Chakro gave a *Lathi* blow near his ear. The deceased reported this matter to father of Chakro i.e. appellant Vidhyadhar. Vidhyadhar did not hear to him. The allegations are that in retaliation, all the appellants, along with Sunil (a juvenile offender), in furtherance of their common object, attacked over the deceased by knife and club. The incident was witnessed by many persons including the wife of the deceased namely Sabana Bai (PW-1), who reported the matter to outpost of P.S. Civil Lines, Raipur at about 15 hours. The report was reduced into writing under Ex.-P/1, based on which, the F.I.R. (Ex.-P/1-A) was registered in P.S. Civil Lines vide Crime No. 212/2001 u/ss. 147, 148 & 307/149 I.P.C.

(3) The deceased died during the course of treatment in Medical College, Raipur on 24-03-2001, from where an

information (Ex.-P/18) was given to the police at about 16.15 hours by the Ward Boy of the hospital. In further investigation, a *merg* intimation (Ex.-P/18-A) was recorded. The Investigating Officer gave notice (Ex.-P/13) to the *Panchas* and prepared inquest (Ex.-P/14) on the body of the deceased. The body was sent for post-mortem examination to the Medical College Hospital under Ex.-P/15, where Doctor Ulhas Gonnade (PW-10), conducted the post-mortem and prepared his report Ex.-P/16. He noticed the following injuries on the body of the deceased:

i) one stab wound on the stomach size 1.5 cm. x 0.5 cm., which pierced anterior abdominal wall and that completely pierced small intestine through and through at one place, further piercing membrane of small intestine at 3 places.

ii) one stab wound at the lower end of scapula bone size 2 cm. x 3 cm., there was perforation over the 7th & 8th ribs and it has also perforated the lungs, huge amount of blood (about 1 litre) was present in plural cavity.

iii) an abrasion on the lower portion of the left hand size 2.5 cm. x 2 cm.

According to his opinion, the death was due to shock and hemorrhage as a result of stab injury to lung. The injury was caused by hard, sharp and blunt object. The injury was sufficient to cause death in ordinary circumstances and the death was homicidal in nature.

(4) In further investigation, memorandum of Chakro was recorded under Ex.-P/2, based on which, one *Gupti* was seized under Ex.-P/3 from his possession. Memorandum of Mohan was recorded under Ex.-P/4 and a bamboo club was seized under Ex.-P/5 and memorandum of Vijaydeep was recorded under Ex.-P/6 and a bamboo club was recovered under Ex.-P/7. Blood stained and plain soil were seized from the place of occurrence under Ex.-P/11. Site plan was prepared under Ex.-P/12. The

seized weapons were sent for their examination to Dr. Ulhas Gonnade, who gave his report (Ex.-P/17). According to this report, the stab wounds found on the body of the deceased could be caused by the said *Gupti*, the iron portion of which, was having length of 38.5 cm. and the breadth was different at different place. These articles were sent for examination to the F.S.L., Raipur under Ex.-P/22. They were received by the said laboratory under Ex.-P/23 but F.S.L. report could not be received.

(5) After completion of usual investigation, the charge-sheet was filed in the Court of Chief Judicial Magistrate, Raipur, who in turn committed the case to the Court of Session Judge Raipur, from where it was received on transfer by the 3rd Additional Sessions Judge, who conduct the trial and convicted and sentenced the accused/appellants as aforementioned.

(6) Learned counsel for the appellants has not disputed the homicidal death of the deceased Raja. It comes in the evidence of PW-1, Sabana (wife of the deceased) that Sunil, Mohan, Vidhyadhar, Chakro and Vijay came to the place of occurrence, Chakro was armed with knife, Vijay was also armed with knife, Mohan was also armed with knife, Vidhyadhar was armed with club and Sunil was also armed with knife like weapon. Vidhyadhar started beating her husband by *Lathi.* She also received one injury by *Lathi.* Chakro assaulted with *Gupti* (knife) and caused two injuries to her husband, one on the stomach and other on the back. Sunil also gave knife blow, Vijay gave *Lathi* blow. She tried to stop but she could not stop them and even when she made cries like 'save-save', nobody came to the place of occurrence. The said evidence of this witness is supported by the contents of the F.I.R. (Ex.-P/1) as also Ex.-P/1-A. Moreover, this witness is further corroborated by the medical evidence of Dr. Ulhas Gonnade (PW-10), who conduct the post-mortem on the body of the deceased and noticed above 3 injuries. Injury No.1 had pierced the anterior abdominal wall

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and had completely pierced the small intestine through and through at one place, and had also pierced membrane of small intestine at 3 places. Injury No.2 was also stab wound which has perforated the lung and huge amount of blood was present in plural cavity. He has given his opinion that the death was due to shock and hemorrhage as a result of stab injury to lung. It was caused by hard, sharp and blunt object and was sufficient to cause death in ordinary course of nature and the death was homicidal in nature. Therefore, it is established that the death of deceased was homicidal in nature.

(7) Learned counsel for the appellants argued that PW-1, Sabana is an interested witness being wife of the deceased. Therefore, no explicit reliance can be placed on her evidence. He further argued that except appellant Chakro other appellants have been convicted with the aid of Section 149 I.P.C., which does not appear to be correct. In fact, there is no evidence of common object and everybody would be responsible for his own act. Alternatively, lastly, he argued that the evidence regarding giving stab wounds comes against Chakro only and in the circumstances in which the incident took place, the offence against him would not travel beyond Section 304 (Part-II) I.P.C.

(8) On the other hand, learned counsel for the State opposed these arguments and supported the judgment of conviction and order of sentence passed by the trial Court.

(9) So far as first argument regarding credibility of evidence of PW-1, Sabana, is concerned, her credibility cannot be doubted only on the ground that she is the wife of the deceased, it has been held by the Apex Court in catena of decisions that the relationship is not a factor to affect the credibility of a witness. It is more often than not that the relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if a plea of false implication is made. In such cases, the Court has to adopt the careful approach and

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analyze the evidence to find out whether it is cogent and credible that is to say that their evidence has to be scrutinized with great care and circumspection. Please see ***AIR 2007 S.C. 1299 – Kalegura Padma Rao & another –vs- The State of A.P***.

(10) About the aid of section 149, in the matter of ***Basisth Roy and others –vs- State of Bihar, AIR 2003 S.C. 1439***, the Apex Court held that when omnibus statement in the complaint that all other accused also attacked with lathis are not supported by medical evidence or by witnesses, other accused cannot be held to have shared common object of the two accused as in that case who are attributed specific overt act, saying this the Apex Court held that the conviction of other accused persons u/s 300 with the aid of section 149 is based on no material and the same was liable to be set aside.

(11) Therefore, it is clear that the omnibus statement about other accused persons than the main assailant regarding participation in the crime which may not constitute an element of common object cannot make them responsible for conviction u/s 302 with the aid of section 149 I.P.C. and to this effect the scrutiny of the evidence has to be done to find out their participation with reference to the ingredients of section 149 or with reference to the share of the common object with the main assailant.

(12) PW-1- Sabana, PW-4- Sakuntla, PW-5 Lalita Deshmukh, PW-7- Ku. Jyoti Sahu and PW-8- Vimla claim to be the eye witnesses of the incident.

(13) PW-1, Sabana has stated that on 24th i.e. Saturday at about 2.00 p.m., her husband Raja had gone to purchase biscuits along with two children namely Jitu and Ritu. At that time, Chakro, Vijay and Sunil had pushed her husband. There was some altercation and Chakro gave one *Lathi* blow at the left ear of her husband, blood started coming out but she has not

witnessed this occurrence because she was in house and this was told by her son. Thereafter, she took Raja to the father of Chakro i.e. Vidhyadhar and told the story. On this, Vidhyadhar slapped Raja and they started to return back to their house. It is at this time Sunil, Mohan, Vidhyadhar, Chakro and Vijay came to the place of occurrence. Chakro, Vijay, Mohan and Sunil were armed with knifes, Vidhyadhar was armed with a club. They attacked her husband and started assaulting him. She tried to stop them but they did not hear. Chakro attacked over the stomach and back on her husband by *Gupti*, Sunil assaulted him with knife, Vijay assaulted him with *Lathi*. She had made hue and cry but nobody came to the place of occurrence. Thereafter, she went to the police station to lodge the report. The evidence of this witness is supported by the contents of the F.I.R., which was immediately lodged by her to the outpost just within half an hour of the incident. The F.I.R. contains the names of all the 5 assailants and it also contains the detail about *marpit* and further that her husband was assaulted by appellant Chakro with a knife on his stomach and back. Her husband was also taken to the police outpost. Though a lengthy cross-examination has been done by the defence and they have brought some omissions in her evidence but those omissions are not the material omissions and after careful scrutiny of this witness, it is established that the above 5 accused persons were present at the place of occurrence and two stab injuries were caused by accused/appellant Chakro with the help of *Gupti* (knife like object).

(14) PW-4, Sakuntla is the step sister of the deceased. She has deposed that on Saturday at about 2.00 p.m., when she was returning from the school to her house, she saw a mob in *gali* and the 5 accused persons were beating her brother. She has most specifically stated that Chakro was armed with *Gupti*, by which, he had assaulted her brother on his stomach. She has further deposed that Mohan had also assaulted by knife on the

back and after snatching *Gupti* from Chakro, he had also assaulted on the stomach of her brother. She has been confronted by her police statement (Ex.-D/2), in which she has only stated about causing two stab injuries by Chakro and has given omnibus statement about other accused persons. On appreciation, we find that her evidence is consistent to the effect that two stab injuries were caused by Chakro to the deceased and the evidence regarding *marpit* by other accused persons to the deceased, in the manner deposed by her, is an exaggeration and from her evidence, there does not appear to be an element of common object sharing by other accused persons.

(15) PW-5, Lalita Deshmukh is a neighbour. She has given omnibus evidence about participation of all the accused persons in crime in question but she has specifically deposed that Chakro had assaulted the deceased on his stomach with the *Gupti.*

(16) PW-7, Ku. Jyoti Sahu has also deposed about assaulting the deceased by Chakro with a *Gupti.* She has stated that Mohan was standing there and he had assaulted by knife and Vidhyadhar had assaulted with *Lathi.* We find that in the post-mortem report, except two stab wounds which are attributed to Chakro, there are no other stab wounds on the body of the deceased neither there is any laceration etc. Therefore, the evidence of this witness is not supported by the medical evidence and her version regarding participation of the other accused persons appears to be false.

(17) PW-8, Vimla has also deposed about assault of the deceased by Chakro with a *Gupti,* and that the other accused persons were chasing the deceased.

(18) In appreciation on entire evidence of all these witnesses, we find that so far as participation of Chakro in crime in question is concerned, they have established it, but, as far as other appellants are concerned, their evidence about their

participation is inconsistent and shaky. Neither their common object is established nor individual act allegedly attributed to them has also been established beyond reasonable doubts. It only comes that they were present at the scene of occurrence but it does not come that they were sharing common object with Chakro for commission of murder of Raja or they participated in murder of deceased by their individual acts. Hence, we are of the considered opinion that on the basis of evidence on record, it is not established that these appellants i.e. Vidhyadhar, Mohan and Vijay were sharing a common object for murder of deceased Raja and they cannot be held responsible with the aid of Section 149 I.P.C. We hold that in fact, only Chakro was responsible for the death of the deceased and complicity of these appellants for such offence is doubtful.

(19) So far as offence against Chakro, not traveling beyond Section 304 (Part-II) is concerned, Mr. Bhaduri has placed reliance on the three decisions of the Apex Court in the matters of ***Ram Swarup Vs. The State of Haryana, (1976) 4 SCC 85***; ***State of M.P. Vs. Deshraj and others, AIR 2004 SC 2764*** & ***Shivappa Buddappa Kolkar alias Buddappagol Vs. State of Karnataka and others, AIR 2004 SC 5047***.

(20) In *Ram Swarup's* case (supra), the offence under Section 302 IPC was converted to 304 (Part-I) on the ground that it was not the case of premeditated or deliberate murder and the deceased died as a result of a mutual fight which developed at the spur of the moment without any premeditation. The Apex Court took note of the fact that although the appellant was armed with a deadly weapon like jaili, he took care to assault the deceased only with the *lathi* portion of it and not with the iron portion of it which would have caused much more severe injury. Moreover, it was a case in which only one injury was attributed to the appellant which was caused by the appellant in the course of mutual *marpit* when blows were raining freely by members of both the parties. In *Deshraj's* case (supra), there

was fight between accused and the deceased and the injured witnesses, and the injuries came to be inflicted in course of sudden quarrel and the case was of a joint attack resulting in death of the victim and causing injuries to others and in the said scenario, the accused persons were held to be liable to be convicted under Section 304 (Part-II) IPC. In *Shivappa Buddappa Kolkar's* case (supra), the accused during quarrel suddenly took axe and gave solitary blow on back of head of deceased resulting into his death. There was no pre-meditated or pre-arranged plan to attack deceased. The medical evidence did not show that injury inflicted by itself would be sufficient in ordinary course of nature to cause death and in the said situation, the Apex Court held that the accused could be imputed with knowledge that injury inflicted by him was likely to cause death and conviction altered to Section 304 (Part-II) IPC.

(21) These judgments are distinguishable on facts. Present is not a case of sudden quarrel and infliction of injury at once during the quarrel. It is also not a case where less dangerous portion of a weapon has been used by the assailant because the assailant has used the iron portion of *Gupti*. Further the case is not that a single injury was inflicted by the appellant on the deceased in spur of moment out of heat of anger. This is a case in which the appellant Chakro has caused two stab wounds to the deceased one on the stomach and other on the lower end of scapula. The first injury went deep to the intestine and completely pierced it through and through and further damaged the membrane of small intestine at 3 places. The second wound has perforated the lungs and on account of hemorrhage about 1 litre blood was present in the plural cavity. All this shows the intention of the appellant Chakro was to cause death of the deceased and severity of the blow, nature of injuries caused, number of injuries inflicted, place of body chosen for inflicting the injuries, nature of weapon used, portion of weapon used and the manner in which the injury has been caused to the deceased

by this appellant makes him liable for punishment under Section 302 IPC. Therefore, this arguments advanced by Mr. Bhaduri cannot be accepted.

(22) In the result:

> Criminal Appeal No. 462/2002 is allowed. The conviction and sentences awarded to appellants Mohan and Vijay are set aside. They are acquitted of the charges framed against them.

> Criminal Appeal No. 461/2002 is partly allowed. The conviction and sentences imposed against appellant No.2 Vidhyadhar are set aside. He is also acquitted of the charges framed against him. However, appeal filed on behalf of appellant Chakro is dismissed. His conviction and sentences awarded by the Sessions Court are maintained.

Sd/-
Sunil Kumar Sinha
Judge

Sd/-
L.C. Bhadoo
Judge

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